

# ASEAN REGIONAL FORUM: REALIZING REGIONAL CYBER SECURITY IN ASEAN REGION

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## Abstrak

Penelitian ini bertujuan untuk mengkaji penanganan *cyber crime* di ASEAN dan peran *Asean Regional Forum* dalam mewujudkan *regional cyber security* melalui *Treaty of Amity and Cooperation*. Penelitian hukum ini adalah penelitian hukum normatif bersifat preskriptif dengan pendekatan penelitian melalui pendekatan undang-undang dan pendekatan konseptual. Bahan hukum penelitian ini menggunakan bahan hukum primer dan bahan hukum sekunder. Bahan hukum tersebut dikumpulkan melalui studi kepustakaan dan studi dokumen, yang selanjutnya teknis analisis yang digunakan adalah metode deduktif. Hasil penelitian menunjukkan bahwa penanganan *cyber crime* di dalam *Asean Regional Forum* adalah melalui *Confidence Building Measures*, *Preventive Diplomacy* dan *Conflicts Resolutions* melalui konsep keamanan kawasan. *Treaty of Amity and Cooperation* dapat dijadikan landasan hukum bagi negara-negara anggota *Asean Regional Forum* guna mewujudkan *regional cyber security* selama masing-masing negara menghormati prinsip itikad baik dan prinsip persetujuan untuk terikat sesuai dengan Hukum Perjanjian Internasional. Negara-negara ASEAN juga dapat memanfaatkan keanggotaan negara-negara maju *Asean Regional Forum* dalam pembangunan *regional cyber security* di ASEAN melalui mekanisme kerjasama bilateral.

**Kata kunci:** *Asean Regional Forum, Treaty of Amity and Cooperation. Cyber Crime, Regional Cyber Security.*

## A. INTRODUCTION

Asean Regional Forum (ARF) is official dialog in the government level, which is created by the Association of Southeast Asian Nations (ASEAN) and part of the effort to build mutual trust among ASEAN countries and Asia Pacific countries to discuss regional security issues. One of the purpose is to create larger political environment and security, so ASEAN can grow up in a more powerful region (F. Andrea, 1996: 76). and be no exception in combating cybercrime. This is caused by the development of Information communication and technology (ICT) especially internet that opened the possibility to evoke a kind of crime that threaten regional stability and security. ASEAN already has a legal instrument to regulate the relations between ASEAN countries that called The Treaty of Amity And Cooperation (TAC) and during the ARF meeting in Bangkok 1994 agreed TAC as code of conduct of ARF member states. The Adoption of TAC in ARF had a positive impact because TAC is legal instrument that will guide ASEAN countries and Asia Pacific countries to attain the goals of ARF itself, include realizing Regional Cyber Security.

Cyber crime is a transnational crimes that requires a cooperation of law, political and security to achieve cyber security. A international cooperation is either form effective measures in response to cyber crime. International regional countries of Southeast Asia that officially formed on the August 8, 1967 in Bangkok could not be separated from the effects of this crime. Most of the countries ASEAN has experienced an attack cyber crime, for instance, Malaysia's Police recorded 24 cases of hacking between January and September 2012, with estimated losses of 1.1 million Dollars, Indonesia has experienced serious online fraud schemes involving losses of over 500 thousands Dollars accounted for 40% of the 176 cybercrime cases reported for the first four months of 2013, The Cambodian Government has been subject to multiple cyber attacks in the past, including one in which anonymous stole and leaked over 5,000 documents from Ministry of Foreign Affairs, Singapore according to Trend Micro Smart Protection Network showed that more than 900 Singapore citizens were victims of online banking fraud in the first quarter in 2013, and Brunei according to IT Protective Security Services recorded more than 2000 cyber attacks in

2010-2012, consisting of 62% virus attacks, 26% spam, 7% defacement, and 4% scams, as well as Thailand experienced 1,475 intrusions into government sites and hundreds of malware attacks and phishing incidents (Caitriona H. Heinl, 2014: 2014: 121-122). The incidents showed that ASEAN region is vulnerable in combating cyber crime.

The obstacle for ASEAN in realizing cyber security is pluralism of national cyber law among ASEAN countries that can lead to as hard for realizing cyber security in the Southeast Asia, because of each country to enforce the law related to cyber crime especially when offenses is in cross-border state will be faced with jurisdiction of other countries (Purna Cita Nugraha, 2014: 116). Therefore, it needs an alternative approach for ASEAN countries to overcome cyber crime and also engage countries of outside ASEAN in considering these crime as a transnational crime, the one way is through ARF.

ARF was officially formed in 1994 as part of the follow-up of Annual ASEAN Ministerial Meeting held at the end of 1993 in Singapore. ARF is formed as a vehicle for dialog and consultation about issues that related to politic and security in ASEAN and the Asia Pacific region, and to discuss and equalize the view among ARF member states to minimize a threat of stability and security areas (Tabloid Diplomacy, 2011). The spirit of the formation ARF is a manifestation of The ASEAN Declaration or also known as Bangkok Declaration stated that "establish a firm foundation for common action to promote regional cooperation in South-east Asia in the spirit of equality and partnership and thereby get involved toward peace, progress and prosperity in the region".

ARF is the only forum at the level of government that is attended by most of the countries in the Asia-Pacific region and other areas such as the United States, Russia, China, Japan, South Korea and the European Union. ARF as international forum is expected to give more contribution in combating cyber crime. ARF as forum for dialog and consultation in its development has had several times to discuss the issues related to cyber security and formed a work plan on cyber security. The Formation work plan on cyber security is expected to give birth to a regime in the up coming years to ARF member states and has instruments itself which is related to cyber security. The instruments of ARF such as resolutions, declarations, statements, principles, objectives, declarations of principles, guidelines, standards, or action plans and have a morally and legally binding power for ARF member states in realizing regional cyber security (Purna

Cita Nugraha, 2014: 121-122). Based on the introduction, afterwards raised a question, what the role of Asean Regional Forum in realizing regional cyber security in ASEAN?

## B. METHOD

The research used normative legal research or also known as doctrinal legal research, that meant the research based on based law as a norms (Peter Mahmud Marzuki, 2014: 55-56). The legal research used approach undang-statue approach and conceptual approach. The statue approach was an approach conducted by examining all laws and regulations that related with the issue of the law that was being dealt with, while the conceptual approach was an approach conducted by analyzing the issues with positive caused by absence of particular related-law (Peter Mahmud Marzuki, 2014: 133). The legal research used primary legal materials and secondary legal materials. Primary legal materials were autotaritatif legal materials. Primary legal materials comprised the legislations, official instruments and regulations as well as jurisprudences. The secondary legal materials as all publication of the law on textbooks, law dictionary, the journal of law, and verdicts (Peter Mahmud Marzuki, 2014:181), while technical legal materials collection used library research with analytical deductive method.

## C. RESULTS AND DISCUSSION

The Misuse of cyber space will rise of risk cyber crime that faced by ASEAN member states. Nowadays cyber criminal has been shifting from the financial information data theft to be more business espionage and accessed to government informations. The growth of cyber crime needs to be addressed as soon as possible. Insofar as states may be concerned, misappropriation of responsibility could lead to misunderstandings and possible escalation in tensions or conflict because to accurate identification of those responsible for a cyber attacks is not always easy (Caitriona H. Heinl, 2014: 138).

Cyber crime is one of the form transnational crimes at today's put in the world wide attention. The worries about the impact is conducted by cyber crime delivered in International Information Industries Congress (IIIC) 2000 Millennium Congress in Quebec on November 19, 2000, which stated that "cyber crime is a real and growing incognitoed to economic and social development around the world. Information technology touches every p. practical aspects of human life and so can't

electronically enabled crime” (Barda Nawawi Arief, 2006:2). In addition, the UN as an international organization that in maintaining stability and world peace is also concern about cyber crime. This was seen on the agenda Congress United Nations (UN) on The Prevention of Crime and the Treatment of Fugitives Offenders are the Congress VIII/ 1990 in Havana and The Congress XI/ 2000 in Vienna.

Congress document UN XI/ 2000 in Vienna stated that:

*“In global computer networks, the criminal policy of one state has a influence on the international community. Cyber criminals may direct their electronic activities through a particular State where that behavior is not criminal and thus be protected by the law of that country. Even if a State has no particular national interest in criminalizing certain behavior, it may be consider doing so in order to avoid becoming a data haven and isolating internationally. The harmonization of substansive criminal law with regard to cyber crimes is isstential if international cooperation is to be achieved between law enforcement and judicial authorities of different States”* (United Nations Document, 2000).

Therefore, by seeing attention to cyber crime that conducted by IIC 2000 Millennium Congress and The Congress UN on The Prevention of Crime and the Treatment of Fugitives Offenders emphasized that in order to prevent and deal with cyber crime which having the character as transnational crime required international cooperation efforts by the states in the world.

Althoug the importance of the ASEAN region for cyber security architecture is growing, but national and regional efforts to adopt comprehensive cyber security strategies have been slow and fragmanted, so it’s needed greater collaboration on cyber related-challenges among ASEAN member states through adoption of alternative structures and novel ways that can put complement national initiatives and international efforts, one of that ways is through ARF.

ARF has brought together 10 ASEAN countries and ASEAN dialog partners that included Australia, Canada, China, the European Union, India, Japan, New Zealand, South Korea, Russia, the United States and ASEAN observer comprised Papua New Guinea, North Korea, Mongolia, Pakistan, Timor-Leste, Bangladesh and Sri Lanka. In its development of ARF has 3 mechanisms, there are Confidence Building Measures (CBM); Diplomacy (PD), and Conflict Resolutions (CR).

## 1. Confidence Building Measures

Confidence Building Measures (CBM) is an effort of the ASEAN that is trying to promote this mutual trust formed between countries as the base of mutual security arrangements. ASEAN believed that through CBM would set up more stable security at the regional level (Sugeng Riyanto, 2009: 99). ARF emphasize that security issues that are growing dan faced by ASEAN cross away from Southeast Asia itself. It means the effort in combating cyber crime that faced by ASEAN is also related with the outside states of ASEAN. CBM is one of advanced-development of cooperative security for building widely security especially in combating cyber crime by doing reciprocal cooperation among ARF member states considering ARF comprised developed-countries and developing-countries. CBM is also supported by General Assembly Resolution 33/99 B on Confidence Building Measure stated that CBM as a mechanism that can be used by United Nations member states for understanding about importance of security cooperation. There are several ways CBM that can be held, there are always arrange periodical meeting between state officials with the relevant topic in the ARF framework to discuss the ARF inter-state members to make the collective strategy related cyber crime enforcement, development aid mutual cooperation between ARF member states in order to combat cyber crime, and develop a international framework cooperation such as joint cyber forensic mechanism between ARF member states.

Treaty of Amity and Cooperation (TAC) that is used as a code of conduct in ARF has a legal basis that is stated in Article 3 TAC:

*“In pursuance of the purpose of this Treaty the High Contracting Parties shall endeavor to develop and strenghten the traditional, cultural and historical ties of friendship, good neighbourliness and cooperation which bind them en masse and shall fulfill in good faith the obligations assumed under this Treaty. In order to promote the closer understanding among them, the High Contracting Parties shall encourage and facilitate contact and intercourse among their peoples”.*

Article 3 TAC providing obligation to parties that consent to be bound in TAC to always encourages fastened-friendship, live side by side, and cooperation among parties. The purpose of Article 3 TAC is always

encourage communication and friendship in achieving peace and security.

## 2. Preventive Diplomacy

Preventive Diplomacy (PD) in ARF includes 3 matters, the first is the effort to build mutual trust between states, the second, norms buildings which is norms behavior maintenance that established a relationship between states in the ASEAN region, and the third is, "enhancing channels of communication", which is open and improve easy and directly communication among ARF member states to encourage openness with the aim to avoid wrong perception or misunderstanding. This according to Article 4 TAC stated that,

"The High Contracting Parties shall promote active cooperation in the economic, social, technical, scientific, and administrative fields as well as in matters of common ideals and aspiration of international peace and stability in the region and all other matters of common interest".

There are several ways that can be conducted by the PD mechanism such as to encourage cooperation with international organizations for instance United Nations Office on Drug and Crime (UNODC) and International Telecommunications Union (ITU) in providing an exchange of information and cooperation to combat cyber crime among ARF member states, to push ARF member states in synchronizing national laws toward international laws especially to Convention on Cyber Crime 2001 and United Nations Convention Against Transnational Organized Crime (UNOTC). In the ASEAN region can be conducted by using ASEAN Mutual Legal Assistance, and the ASEAN Convention on Counter-Terrorism to combat cyber crime.

## 3. Conflict Resolutions

TAC as code of conduct in ARF has a legal basis for a mechanism CR that is found in the Article 13 TAC stated that:

"The High Contracting Parties shall have the determination and good faith to prevent disputes from arising. In case disputes on matters directly affecting them should arise, especially disputes likely to disturb regional peace and harmony, they shall refrain from the threat or use of force and shall at all times settle such disputes among themselves

through friendly negotiations".

This Article has an obligation to ARF member states to prevent the disputes. Although cyber crime is not an direct dispute that rise impact on stability and security among ARF member states, but cyber crime is a issue that must be addressed through international cooperation considering it will increase negative impact for ARF member states. CR is a final final goal that bring ARF member states have an instruments that has the legally binding power and morally binding power for realizing cyber security, it may be seen at ARF Concept Paper 1995, stated that:

### Stage III: Conflict Resolution

"It is not envisaged that the ARF would establish mechanisms conflict resolution in the immediate future. The establishment of such mechanisms is an eventual goal that ARF participants should pursue as they proceed to develop the ARF as a vehicle for promoting regional peace and stability".

Nowdays, ARF has not yet been able to form an instruments that has the power agreeing on binding , this is due to ARF as international forum has not yet have the authority and law power (Sugeng Riyanto, 2009: 142-143) which caused the results that have been agreed cannot be imposed in the execution, But it is not much influence on ARF role in combating cyber crime to realize regional cyber security that can be seen by commitment of ARF member states to establish 2 instruments. There are, ARF Statement On Fighting Cyber Attack And Terrorism Misuse Of Cyber Space 2006, which is a statement of ARF member states to emphasize commitment of ARF member states in overcoming all forms of terrorism and cyber attack. ARF member states realized that all forms acts of terrorism that use cyber space as their tool to commit destructive crimes. This Instrument emphasizes consequence of the misuse of cyber space which targeted government infrastructure and communication will has relation with the economy and individual aspects. Because of that, in these instrument also emphasizes cooperation among ARF member states to prevent exploitation technology, communications and resources, including internet that commit with criminal acts and terrorism (Asean Regional Forum Publication: 253-254), and ARF Statement by The of Foreign Affairs On Cooperation In Ensuring Cyber Security 2012. These

instrument is a statement from the Minister of Foreign Affairs of ARF member states, which aims to reaffirm their commitment toward cyber security. ARF member states through these instrument admitted that security in using ICT is one of the main pillars in the increase relations between countries. Therefore, it requires a commitment to encourage, build, and implement action in the management of all forms and combating cyber crime to realize regional cyber security. These instruments also emphasized that ARF member states must be consistent with ARF Statement On Fighting Cyber Attack And Terrorism Misuse Of Cyber Space 2006 as the terrorism and cyber crime eradication (Asean Regional Forum Publication: 266-267).

ARF as political and security dialog forum using cooperative security as a approach in increasing relation among ASEAN member states and ASEAN dialog partners. Developing regional security partnership is a main ARF agenda, where the partnership in building regional security is security order of a international region that based on consensus among governments to cooperate in handling security threats. In maximizing ARF as a forum in creating a regional cyber security in Southeast Asia, the ASEAN needs to maximize the role developed-countries in ARF into the development in ASEAN itself. In the last few years it can be seen through:

#### 1. ASEAN-China Cooperation

ASEAN and China agreed to strengthen cooperation in security through a Memorandum of Understanding between The Association of Southeast Asian Nations (ASEAN) and The Government of The People's Republic of China on Cooperation in The Field of Non-Traditional Security Issues 2009. These instrument will strengthen ASEAN and China which cover the exchange of information in the field of law and political policy for combating non-traditional crime, training and exchange between each parties personnel to strengthen the capacity and capability in the fight against non-traditional crime including cyber crime; law enforcement cooperation among each parties through cooperation reciprocal evidence collection, tracking affiliated-criminals, and arrest and extradition fugitives among parties; and mutual research through exchange non-traditional crime official experts among parties.

#### 2. ASEAN-Japan Cooperation

ASEAN-Japan cooperation through The ASEAN-Japan Joint Declaration For Cooperation to Combat Terrorism and Transnational Crime on November 2014 in Myanmar. These instrument emphasizes ASEAN and Japan commitment to make bilateral cooperation to fight against terrorism and related transnational crime. The related-crime cooperation can be found in Article 8, which has some commitment of each parties to cooperate in combating cyber crime, stated that:

*"Recognizing cyber crime as fast-spreading threat, we are committed to tackling it jointly through: Promoting information-sharing on cyber crime trends and lessons learned to combat cyber crime between ASEAN and Japan; Enhancing international cooperation on cyber crime investigation and prosecution involving ASEAN member States and Japan, including through the use of the exciting channels of international cooperation such as the international criminal police organization (ICPO)-INTERPOL, G8 24/7 Network, and the electronic ASEANAPOL Database System (e-ADS); Promoting capacity building in order to effectively prevent and combat cyber crime"* (The ASEAN-Japan Joint Declaration to Combat Terrorism and Transnational Crime, 2014: 5).

As follow-up to these bilateral cooperation Japan invited personnel security of ASEAN countries both public and private sectors to receive cyber crime enforcement training in Tokyo and Japan made an animated film which has the concept of how to combat cyber crime. ASEAN countries will feature these film to education institute each country and television in ASEAN (The ASEAN-Japan Joint Declaration to Combat Terrorism and Transnational Crime, 2014: 5).

#### 3. ASEAN and the European Union Cooperation

Cooperation between ASEAN and the European Union through Nuremberg Declaration on an EU-ASEAN Enhanced Partnership 2007 has commitment from the regional organizations in international cooperation in order to reach the common goals of the ASEAN

and the European Union to promote security and stability in Asia-Pacific region. The Nuremberg Declaration 2007 is also manifestation of European Union commitment towards TAC as the basis for maintaining peace and security in ASEAN and the Asia Pacific region. The Declaration Nuremberg 2007 has obligation to ASEAN and the European Union for combating cyber crime, stated that:

*“Promote closer cooperation in addressing and combating terrorism, trafficking in human beings, drug trafficking, sea piracy, arms smuggling, money laundering, cyber-crime and related trans-national crime, by undertaking cooperative efforts in accordance with international law”*(Nikkei Asian Reviews, 2014: 4).

As follow-up to the bilateral cooperation between the two regional organizations especially in combating cyber crime then ASEAN and the European Union made Regional EU-ASEAN Dialog Instrument (READI) workshop on Cyber Crime Legislation in ASEAN Member States that was held on November 27- 28, 2008 in Kuala Lumpur, Malaysia and on January 26-28, 2010 in Manila, Philippines, as well as through ASEAN-EU Training for Law Enforcement, Judges and Prosecutors on Cyber Crime on July 4-8, 2011 in Malaysia. Those events give understanding both of them in importance of how to deal with cyber security matters through intensive cooperation by sharing legal basis on cyber crime.

To achieve a more resilient structure for ASEAN-wide cyber security, member states should develop and implement a comprehensive, forward looking, and multipronged framework to coordinate regional cooperation on common global cyber security challenges. Not only is this approach in the common interest of ASEAN member states, such measures would benefit the broader region as well as the international community such as ARF (Caitriona H. Heintz, 2014: 149-150). *Good faith principle* can be considered

as a soul of an international treaty. As code of conduct in ARF, TAC has a legal basis for realizing regional cyber security in ASEAN, but it depends on how far the parties show their good faith that can be seen from their actions as stated in Article 3 TAC. *The pacta sunt servanda principle* has also significant influence towards *good faith principle* because the act of these principle should be based on *good faith principle*, so relation between both of them is very tied in international law (I Wayan Parthiana, 2002: 263). Therefore, every act of parties that consent to be bound in TAC should put respect toward *pacta sunt servanda principle* and *good faith principle* as attempt in realizing regional cyber security in ASEAN. In addition, ASEAN should maximize the ARF mechanisms to get attention and build international cooperation in combating cyber crime through cooperative security concept either in bilateral cooperation or multilateral cooperation.

#### D. CONCLUSION

In the globalization era, ASEAN region should put their attention in the cyber security across its member states. ASEAN has taken several measures to address some of the cyber-related challenges facing region, one of them are by maximizing ARF. ARF has 3 mechanisms to combat cyber crime, there are Confidence Building Measures (CBM) that purposed to build mutual trust among ARF member states toward importance of cyber security development, Preventive Diplomacy (PD) that aimed to make preventive measures for addressing cyber crime threats, Conflict Resolutions (CR) that purposed to draft legally instruments, but it is being at development stage because it needs mutual understanding among ARF member states toward the importance of to become ARF as international organization that has legal authority. Those mechanisms should be maximized by ASEAN, while also take advantage of developed-countries in ARF to pull into ASEAN cyber security development. The respect sense of ARF member states toward *good faith principle* and *pacta sunt servanda principle* in TAC appropriately has also significant influence, especially for ASEAN region.

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